



Federal Communications Commission
Washington, D.C. 20554

May 5, 2011

DA 11-839

Mr. Richard Gilmore
SDM/RDM Manager – Network Services
Columbia Gas Transmission Corporation
PO Box 2318
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Charleston, WV 25314

In re: Columbia Gas Transmission Corporation
Microwave Industrial/Business Pool Stations
KQM59, KFU30, KFU31, KFU32, KFU33, KFU34,
KHY50, KHY52, WPNF873, KQL59, KQM69, and
KFU28
File Nos. 0004597533, 0004597685, 0004597742,
0004597773, 0004597998, 0004598015, 0004598033,
0004598043, 0004599149, 0004599150, 0004599151,
and 0004627555

Dear Mr. Gilmore:

On January 31, 2011, February 1, 2011, February 2, 2011, and February 23, 2011, Columbia Gas Transmission Corporation (Columbia) filed applications to renew the licenses of Microwave Industrial/Business Pool Stations KQM59, KFU30, KFU31, KFU32, KFU33, KFU34, KHY50, KHY52, WPNF873, KQL59, KQM69, and KFU28, each of which expired on either October 17, 2010, or December 27, 2010.¹ Thereafter, on March 22, 2011, Columbia filed amendments to its waiver requests.² Because Columbia filed its applications more than thirty days after expiration, Columbia requests as part of its applications waiver of Section 1.949(a) of the Commission's Rules³ to allow acceptance of its late-filed applications.⁴ In addition, Columbia filed a Petition for Reconsideration requesting that the FCC reconsider its decision to terminate the licenses for call signs WPNF873, KQL59 and KQM69.⁵ For the reasons stated below, we grant Columbia's Waiver Requests and dismiss its Petition for Reconsideration as moot.

¹ Applications for Renewal of License, File Nos. 0004597533, 0004597685, 0004597742, 0004597773, 0004597998, 0004598015, 0004598033, 0004598043, 0004599149, 0004599150, 0004599151, and 0004627555 (Renewal Applications).

² Amendment to File Nos. 0004597533, 0004597685, 0004597742, 0004597773, 0004597998, 0004598015, 0004598033, 0004598043, 0004599149, 0004599150, 0004599151, and 0004627555 (Waiver Amendments)

³ 47 C.F.R. § 1.949(a).

⁴ See Renewal Applications, Waiver of Late Filing for Renewal (Waiver Requests). See also Amendment of Waiver of Late Filing (filed Mar. 22, 2011) (Amended Waiver Requests).

⁵ Letter from Richard Gilmore, Columbia Gas Transmission Corporation, to FCC (Feb. 1, 2011).

Columbia is the licensee of microwave industrial/business Stations KQM59, KFU30, KFU31, KFU32, KFU33, KFU34, KHY50, KHY52, WPNF873, KQL59, KQM69, and KFU28, which are used as part of a system to monitor and control the flow of natural gas in Columbia's interstate pipelines.⁶ Columbia states that the stations are part of a microwave system used to monitor and control the flow of natural gas in Columbia's 12,000 miles of interstate pipelines in 10 states, as well as operating 37 gas underground storage facilities in four states.⁷ Columbia argues that its microwave radio system is essential to providing safe and reliable natural gas delivery to millions of homes and business in its service area.⁸ The licenses for KQM59, KFU30, KFU31, KFU32, KFU33, KFU34, KHY50, KHY52, and KFU28 were last renewed on October 4, 2000, and expired on December 27, 2010 while the licenses for WPNF873, KQL59, and KQM69 were last renewed on August 15, 2000 and expired on October 17, 2010. Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the expiration dates of licenses.⁹ Columbia failed to do so, not filing until January 31, 2011, or later and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of Columbia's late-filed applications.¹⁰

Columbia states that the oversight occurred because the person responsible for managing their Commission license renewals was unexpectedly absent due to cancer.¹¹ Columbia's process was to have the team leader of its billing group manage Commission license renewals.¹² This process only involved one person and did not take into account that person's long term illness.¹³ Columbia apologizes for the oversight and states that it is in the process of establishing a system to prevent future licensing errors.¹⁴ Specifically, field team leaders will manage license renewal dates along with the team leader to ensure that Columbia Gas has two sets of eyes on its existing license portfolio.¹⁵ In the future, NiSource, the parent company of Columbia Gas, will have an experienced frequency coordination company manage all of NiSource's FCC needs, including Columbia's license renewal filings, to prevent this from occurring in the future.¹⁶

The Commission's policy regarding reinstatement procedures in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹⁷ Applicants who file

⁶ Waiver Requests.

⁷ *Id.*

⁸ *Id.*

⁹ See 47 C.F.R. § 1.949(a).

¹⁰ Waiver Requests.

¹¹ *Id.*

¹² Amended Waiver Requests.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless

renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹⁸ In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹⁹ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that Columbia's waiver requests should be granted.

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.²⁰ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.²¹ Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²²

Taking into account all of the facts and circumstances, including the additional information and unique circumstances articulated in Columbia's waiver request, we conclude that Columbia's request should be granted.²³ In particular, we believe that the serious illness of the person responsible for renewing the licenses, together with Columbia's development of alternative processes to ensure renewals are timely filed, constitute unique or unusual factual circumstances. We conclude that the circumstances surrounding Columbia's failure to renew its licenses and the steps taken to avoid future occurrences make it inequitable and contrary to the public interest to apply the renewal rule. Columbia has therefore justified a waiver under the second prong of the waiver standard.

We admonish Columbia to strictly adhere to the representations it has made concerning the new systems it will implement to ensure timely filings in the future. We expect Columbia, as well as other applicants, to strictly adhere to such standards and comply with the Commission's licensing requirements.

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the requests for waiver of Section 1.949(a) of the Commission's Rules filed January 31, 2011,

Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

¹⁸ *Id.* at 11486 ¶ 22.

¹⁹ *Id.* at 11485 ¶ 22.

²⁰ 47 C.F.R. § 1.949(a).

²¹ 47 C.F.R. § 1.955(a)(1).

²² 47 C.F.R. § 1.925(b)(3).

²³ Because we are granting Columbia's waiver request, we are dismissing as moot Columbia's Petition for Reconsideration because the petition also requests that the Commission reinstate the licenses for call signs WPNF873, KQL59 and QQM69.

February 1, 2011, February 2, 2011, and February 23, 2011, by Columbia Gas Transmission Corporation ARE GRANTED.

IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL PROCESS renewal application File Nos. 0004597533, 0004597685, 0004597742, 0004597773, 0004597998, 0004598015, 0004598033, 0004598043, 0004599149, 0004599150, 0004599151, and 0004627555, in accordance with this letter.

IT IS FURTHER ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Columbia Gas Transmission Corporation on February 2, 2011, is DISMISSED AS MOOT.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

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Deputy Chief, Broadband Division
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cc: Nisource
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